IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 7147 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMAJI CHHABAJI & 15 - Petitioner(s)

Versus

SPECIAL LAND ACQUISITION OFFICER & 2 - Respondent(s)

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Appearance :
MR GM AMIN for Petitioner(s) : 1 - 6,6.2.1 - 8, 8.2.1,8.2.2 - 9,9.2.1 - 11,11.2.1 - 13,13.2.1 - 15,15.2.1 - 16,16.2.1
MR SP HASURKAR Ld. AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA
Date : 10/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1.In this petition, the petitioners have challenged order dated 10.7.2002 passed by the Special Land Acquisition Officer (Express Way), Kheda, rejecting the application filed by the petitioners under the provisions of sec. 28A of the Land Acquisition Act

(hereinafter referred to as “the Act”). The said application has been rejected on the ground that the certified copy of the award made by the reference/District Court, Kheda at Nadiad and which has been produced along with the application has been obtained by the advocate other than the advocate who has filed application under sec. 28A on behalf of the petitioners, and in view of the decision rendered by this court in SCA No. 4978/1997 dated 1.9.1998, such application cannot be entertained.

2. According to the petitioners, their lands have been situated in village Modaj, Tal. Mehmedabad, District Kheda, and they have been acquired for constructing express-way. The acquisition was made in accordance with the procedure prescribed under the Act and at the end of the proceedings, the Special Land Acquisition Officer made the award and offered amount at the rate of Rs. 200 per RA. Some of the land owners preferred an application under sec. 18 of the Act to the Collector with a request to make reference to the District Court for enhancement of the compensation. So far as present petitioners are concerned, they did not make such application under sec. 18 of the Act, however, District Court, partly allowed the reference cases i.e. LAR No.

1179/91 to 1182/91 and enhanced the rate of compensation from Rs. 200/- per RA to Rs. 1300/- per RA. In view of the same, the petitioners preferred an application under sec. 28A of the Act. The judgment and award were pronounced on 4.2.2000 and the petitioners submitted the application under sec. 28A of the Act on 11.2.2000. It appears from the averments made in the petition and which are not disputed by the otherside that the petitioners approached this court since their application was not decided expeditiously, by filing SCA No. 10342/2000, which was disposed of by this Court vide its order dated 4.10.2000 directing the respondent no. 1 i.e. Special Land Acquisition Officer to decide the application of the petitioners within 4 months from the date of the order. The same was not done within the stipulated time. Hence, the petitioners preferred an application under the provisions of Contempt of Courts Act. In the meanwhile, the respondent no. 3 – State of Gujarat filed CA No. 10655/2001 for extension of time limit fixed by this Court for deciding the applications under sec. 28A of the Act on the ground that State's appeals were pending before this Court. The petition further shows that these First Appeals were dismissed by this Court on

8.10.2001. The petitioners thereafter gave notice to respondent no. 1 for holding hearing and on the basis of which the hearing took place but no award was made, hence, the petitioner filed another contempt application being MCA No. 62/2002. In the said application, this court issued notice making it returnable on 17.7.2002. But with a view to over come this difficulty, respondent no. 1 decided and dismissed the application filed under sec. 28A of the Act by the petitioners solely on the ground stated above. In view of the same, the petitioners have now approached this court.

3. Having heard Mr. GM Amin ld. Advocate for the petitioners and Mr. SP Hasurkar ld. AGP for the respondents and having perused the record of the petition, it clearly appears to us that the ground on which application under sec. 28A of the Act has been rejected by respondent no. 1, is erroneous. As stated above, this application has been filed under sec. 28A of the Act within the period of limitation, i.e., three months, by the petitioners. It is also an admitted fact that while filing the said application, the petitioners had produced certified copy of the judgment and award made by the District Court. There is

also no dispute that before the District Court, one Mr. HJ Amin had appeared to represent the other land owners who had filed the reference cases before the District Court, whereas, the certified copy of the judgment and award produced along with the application under sec. 28A of the Act by the present petitioners was obtained by Mr. GM Amin, i.e., another advocate. In the opinion of respondent no. 1, when certified copy is obtained by the advocate other than the advocate who has filed application under sec. 28A, the presentation of the application is not proper. As stated above, respondent no. 1 has relied on the judgment rendered by this Court in **SCA No. 4978/1997 dated 1.9.1998.** Mr. GM Amin ld. Advocate has drawn our attention to the judgment on which reliance is placed by respondent no. 1. In his submission, this judgment is not at all applicable to the facts of the present case. The said judgment has been reported in **1999(4) GCD p. 3397.** It is rendered by the Division Bench of this Court in the case of **Gujarat Housing Board Through Executive Engineer vs. Special Land Acquisition Officer, Gujarat Housing Board, Ahmedabad & Ors.** Upon reading the said judgment, it clearly appears that the application in that case under sec. 28-A of the Act was made after the

expiry of period of limitation and in such circumstances, the court came to the conclusion that when the certified copy has not been applied for either by the party filing the application or its advocate, such party will not get any benefit of set-off provided under the proviso of Sec. 28-A of the Act. So far as the facts of the present case are concerned, this judgment cannot apply because it is an admitted position that the application has been made within the prescribed period of limitation. The reliance placed by respondent no. 1 on this judgment for rejecting the application under sec. 28-A of the Act is, therefore, erroneous. In fact, another Division Bench of this court, in a decision rendered in the case of **Ramanbhai Mahijibhai & Ors. vs. Special Land Acquisition Officer, Narmada Yojan Unit 5, Vadodara,** has laid down as under:

> “14.1 From a bare reading of Sec. 28A of the Act, production of certified copy of the award along with application as provided under Order 41, Rule 1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be

rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy excluded. There may be cases where parties may not be aware of the exact nature of the award of the Court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under sec. 28A should always be accompanied with the certified copy."

4. It is, therefore, clear that when the application has been filed within the prescribed period of limitation, it is not required to be accompanied with the certified copy of the award. If that be so, even when certified copy is produced along with the application under sec. 28A of the Act which is filed within the period of limitation, it becomes irrelevant and immaterial that who has obtained the said certified copy. In similar circumstances, another Division Bench of this court has rendered judgment dated 11.10.2001 in the case of **Heirs of deceased Harmanbhai Somabhai vs. Special Land**

Acquisition Officer, wherein, it has been observed that on such hyper technical points application under sec. 28A of the Act cannot be rejected. After making such observation, the Division Bench has remanded the cases to the Special Land Acquisition Officer with a direction to decide them on merits. In view of the same, in the present petition also, such direction is required to be given. Of course, before parting with the judgment, we are constrained to observe that time and again this court has been warning the concerned officers not to cause delay in disposing of the application under sec. 28A of the Act since the delay would mean payment of more amount towards the interest which would be additional burden on public ex-chequer, apart from the harassment caused to the applicant. Mr. Amin has drawn our attention to oral order dated 10.11.1997 made by the Division Bench of this Court in **Special Civil Application No. 6358 of 1997,** wherein, this Court has taken very serious view of the undue delay that was caused on account of inaction of the concerned officer and ordered inquiry against officer responsible for the delay. It has held as under:

> "We, therefore, direct that interest, as stated above, on the amounts due to the petitioners must

be paid by the State in the first instance. After paying the amount, State will hold an enquiry to find out officers, who are responsible in delaying the sanction and/or disbursement of the amounts due to the petitioners beyond 31.1.1993 and recover the interest portion with effect from 1.2.1993 from the salary of such of those officers, who caused the delay. We are insisiting on this procedure in view of the Government Circular dated 10th March, 1997 (at Annexure 'C' to the petition) also.

Progress of this enquiry and the liability of the Officers as fixed in the enquiry and the proceedings initiated against them for recovering the amount from their salary/ personal property should be reported to this court.

A copy of this order will be forwarded to the Chief Secretary to the State Government to personally supervise the enquiry regarding the liability of the individual Officers and recovery of the interest portion from them."

5.Our attention has also been drawn to a Circular issued by the Revenue Department, Government of Gujarat dated 10.3.1997, which prescribes the time limit to decide

and make award under sec. 28A of the Act. Clause-(2) of the said Circular prescribes that within three months, the concerned officer is required to complete the proceedings and pay the compensation to the claimants, in cases where the Special Land Acquisition Officer is authorised to approve the award, and according to Clause(3), in cases where the Government's approval is required, six months period is prescribed. In clause (5), it is prescribed that if on account of delay, the Government is required to pay interest to the claimants, such amount should be recovered from the salary of the concerned Officer. Clause (6) of the Circular envisages departmental enquiry against the defaulting officer. The facts of this case, as stated above, show that the application was made on 11.2.2000 and for getting it expeditiously decided, the petitioners had to file several proceedings before this Court also. Even this Court had given direction to the concerned Officer to decide the application within 4 months from the date of the order, however, it was only by order dated 10.7.2002 the application was decided and rejected on the ground which was not at all legal and relevant for the purpose of the disposal of the application. This is, therefore, gross case showing

complete indifference on the part of the concerned Officer. However, when the Government Circular is very much in existence, we do not propose to give any direction to the Government as to what course it should adopt. It is for the Government to take appropriate decision in the matter. However, in view of the aforesaid discussion, we quash and set aside the impugned order dated 10.7.2002 and direct respondent no. 1 i.e. Special Land Acquisition Officer in this petition to decide and determine the application under sec. 28A of the Act in light of the provision of Sec. 28A of the Act in accordance with law, as expeditiously as possible, in any case, not later than three months from the date of receipt of the writ from this court. This petition is, therefore, allowed. Rule made absolute with costs. Copy of the judgment to be forwarded to the Chief Secretary, Sachivalaya, Government of Gujarat, Gandhinagar.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

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